IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4373 OF 2007.

Nathavade Seva Sahakari Soceity Ltd,)
Nathavade, Taluka Shirala,)
District Sangli.)..Petitioner.

Versus.

1) The Collector of Sangli District)
and Returning Officer of Sangli)
District Central Co-operative Bank)
Limited, Sangli.)

2) State of Maharashtra.)

3) Sangli District Central Co-operative)
Bank Ltd, Sangli.)

4) Sanjay Ramchandra Parit.)

5) Dagdu Tukaram Vanare.)

6) Namdeo Yeshwant Sutar.)

7) Gajanan Hari Bagade.)

8) Ananda Keshav Jadhav.)

9) Smt Kalabai Ananda Mohite)
All R/o. at Nathavade,)
Taluka Shirala, District Sangli.).. Respondents.

Shri P.D.Dalvi for the Petitioner.

Ms.Mhaispurkar, A.G.P. for Respondents Nos.1 and 2.

Shri Umesh Mankapure for Respondent No.3.

Ms.Manisha Shekahar i/by M/s.J.Shekhar & Co.for the Respondents Nos.4 to 9.

CORAM : ABHAY S.OKA, J.

DATED : 20th June, 2007.

ORAL JUDGMENT:

1. Rule. The learned A.G.P.for the first and

second Respondents waives service. The Advocate for the third Respondent waives service. The Advocate for Respondents Nos.4 to 9 waives service. By consent, taken up for hearing at admission stage.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 14th May 2007 passed by the Collector in purported exercise of powers under sub-rule (4) of Rule 6 of the Maharashtra Specified Cooperative Societies Election to the Committee Rules, 1971 (hereinafter referred to as "the said Rules of 1971").

3. The Petitioner-Cooperative society is a member of the third Respondent-society. The 1st Respondent is the Returning officer for the election of the Managing Committee of the 3rd Respondent-society. A meeting was held of the Managing Committee of the Petitioner-society on 26th March, 2007 for nominating its representative for participating in the election of the Managing Committee of the 3rd Respondent. According to the case of the Petitioner one Shri Sanjay Parit was nominated as a representative/delegate by passing a Resolution. Six members of the Managing Committee voted in support of Shri Parit and the five members voted against him. According to the case of the Petitioner, one Ananda Keshav Jadhav remained present in the meeting and in

view of his earlier disqualification, he could not have attended the meeting. Therefore, a fresh meeting was called on 28th March 2007. In the fresh meeting, in place of Shri Sanjay Parit, one Shri Rajaram Maruti Mohite was nominated as a representative. The order impugned has been passed on the basis of the objection raised by the said Shri Sanjay Parit. The Collector by the impugned order held that the Resolution passed on 26th March 2007 nominating Sanjay Parit as representative was valid and therefore he ordered deletion of the name of Shri Rajaram Maruti Mohite as the representative of the Petitioner.

4. Various submissions have been made by the learned Advocate for the Petitioner. He placed reliance on sub-rule (2) of Rule 5 of the said Rules of 1971 and submitted that under the said sub-rule, the Petitioner was empowered to change the name of its representative or delegate which has been done by holding a meeting on 28th March 2007. He submitted that there was no material was placed on record of the Collector to show that the action of the Petitioner was illegal or that the Resolution dated 28th March 2007 was illegal. He submitted that it was not necessary for the Managing Committee of the Petitioner to act only on the basis of the representation or written application and there was always a power vesting under sub-rule (2) of rule 5 to

change the delegate. The learned A.G.P. appearing for the 1st and 2nd Respondents supported the impugned order. The learned Advocate for the 3rd Respondent submitted that the issue regarding the validity of the meeting could not have been decided by the Collector. The Advocate for the rest of the Respondents submitted that no material was produced before the Collector to show that the meeting dated 28th March 2007 was held after following the procedure by giving notice and that is the reason why the Collector has rightly interfered with the resolution.

5. I have considered the submissions made by the Advocates appearing for the parties. One of the question raised is whether the Collector has jurisdiction to decide about the legality or otherwise of both the meetings held by the Managing Committee of the Petitioner. The Collector has observed that there was no application or representation given to the Petitioner for setting aside the resolution passed on 26th March 2007. The said observation is erroneous as there was always a power vesting under sub-rule (2) of rule 5 of the said Rules of 1971 to change the delegate. The said power was exercised in the meeting held on 28th March 2007. The objection filed by the Sanjay Parit could not have been upheld by the Collector only on the ground that there was no application or representation

made before the Petitioner for cancelling the earlier resolution. From the impugned order it appears that the Collector has not even considered whether he had jurisdiction to decide the issue regarding the legality or validity of the meeting held by the managing Committee of the Petitioner. It is an admitted position that as of today the election programme is not yet declared. Considering the controversy involved, it is desirable that the Collector should hear the objections submitted by the said Sanjay Parit i.e the 4th Respondent herein and a fresh order be passed after hearing all the parties and after considering the contentions of the parties.

6. Hence the following order is passed:

(i) The impugned order dated 14th May 2007 is quashed and set aside.

(ii) The Collector, Sangli will hear the parties on Friday i.e. 22nd June 2007 at 11.00 a.m. and will pass a fresh order in accordance with law after considering the contentions raised by the concerned parties.

(iii) The learned A.G.P. will telephonically communicate this order to the Collector, Sangli.

(iv) The parties to act on an authenticated copy of this order.

Judge.